

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BAYNE W. ALEXIS,

Petitioner,

v.

**9:03-CV-1191
(FJS/GJD)**

**WARDEN, Buffalo Federal Detention Facility,
and ATTORNEY GENERAL OF THE STATE
OF NEW YORK,**

Respondents.

APPEARANCES

OF COUNSEL

BAYNE W. ALEXIS

230-37-243

Buffalo Federal Detention Facility

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Petitioner *pro se*

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PATRICK F. MACRAE, AAG

SCULLIN, Chief Judge

ORDER

Petitioner Bayne W. Alexis filed a petition seeking habeas relief pursuant to 28 U.S.C.

§ 2254 from his October 24, 2001 conviction and November 28, 2001 sentence in Oswego County Court.¹ In a Report-Recommendation, dated February 17, 2005, Magistrate Judge DiBianco recommended that this Court deny and dismiss that petition. *See* Dkt. No. 39. By Order dated April 13, 2005, this Court adopted that Report-Recommendation in its entirety and denied and dismissed the petition in its entirety. *See* Dkt. No. 41. Currently before the Court is Petitioner's motion for a Certificate of Appealability. *See* Dkt. No. 46.

Section 2253(c)(1) of Title 28 of the United States Code provides, in pertinent part, that

[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
- (B) the final order in a proceeding under section 2255.

28 U.S.C. § 2253(c)(1).²

Furthermore, the court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

After reviewing the relevant portions of this file and for the reasons set forth in Magistrate Judge DiBianco's Report-Recommendation and in this Court's April 13, 2005 Order,

¹ Petitioner originally filed his petition in the Western District of New York. By Order dated September 19, 2003, United States District Judge David Larimer transferred Petitioner's case to this District. *See* Dkt. No. 8.

² Likewise, Rule 22 of the Federal Rules of Appellate Procedure provides, in pertinent part, that "[i]n a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed. R. App. P. 22(b)(1).

the Court finds that Petitioner has failed to make the required showing.

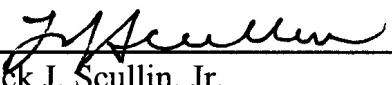
Accordingly, for the above-stated reason, the Court hereby

ORDERS that Petitioner's motion for a Certificate of Appealability is **DENIED**; and the Court further

ORDERS that the Clerk of the Court serve a copy of this Order on the parties.

IT IS SO ORDERED.

Dated: June 6, 2005
Syracuse, New York



Frederick J. Scullin, Jr.
Chief United States District Court Judge